

### **REMARKS**

Claims 11-31 are pending.

Claims 23-31 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 4,930,906 to Hemphill.

Claims 11-16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 5,809,664 to Legros *et al.* in view of U.S. Patent 5,140,845 to Robbins, "Chemical Principals" to Masterton *et al.* and "Compilation of Air Pollutant Emission Factors, AP-42" to the Environmental Protection Agency (EPA).

Claims 17-19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over EPA Method AP-42 in view of Robbins and Masterton *et al.* as applied to claims 11-13, and further in view of U.S. Patent 5,522,271 to Turiff *et al.*, and /or Method 5035- Closed System Purge and Trap and Extraction for Volatile Organics in Soil and Waste Samples to the EPA.

Claims 20-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Method AP-42 in view of Robbins and Masterton *et al.* as applied to claims 11-13 above and further in view of "Determination of Volatile Organic Solvents in Water by Headspace Sampling with the 8200 CX Autosampler" to Penton.

### **Rejection Under 35 U.S.C. § 102(b)**

Claims 23-31 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 4,930,906 to Hemphill. Applicant respectfully traverses the rejection and requests withdrawal of same.

Applicant's invention teaches a kit and method for measuring volatile organic compounds (VOCs) of material produced in a process system having emissions, such as spray dryers, mixers, fluid bed dryers and coolers, and storage tanks. All of these systems are closed systems, and as such have dynamic air flow properties. Applicant maintains that Applicant's claims must be read in light of the specification.

Hemphill teaches a cooking grease disposal bag. Hemphill does not teach or suggest a kit for measuring volatile organic compounds produced in a process system

having emissions as provided by way of Applicant's invention. Further, Hemphill does not teach or suggest spray bed dryers, fluid bed dryers, or storage tank systems having emissions, nor does Hemphill teach or suggest volatile organic compounds being emitted in any system.

Applicant directs the Examiner's attention to the following:

Two criteria for determining whether prior art is analogous are (1) whether the art is from the same field of endeavor, regardless of the problem addressed, and (2) if the reference is not within the field of the inventor's endeavor, whether the reference is still reasonably pertinent to the particular problem with which the inventor is involved. *In re Clay*, 23 U.S.P.Q. 2d 1058, 1060 (Fed. Cir. 1992).

Applicant maintains that Hemphill at that very least is non-analogous art. A discussion of cooking grease disposal bags in Hemphill is not within the field of the inventor's endeavor in the instant application. As stated earlier, Applicant maintains the current rejection of Claims 23-31 over Hemphill is analogous to making a rejection of Claims 23-31 over any resealable bag. There simply is no teaching or suggestion in Hemphill of Applicant's kit for measuring VOCs in a system having emissions as claimed.

The Examiner has directed Applicant to *In re Ngai*, wherein the CAFC decided that the content of the instructions in a kit claim needed to be functionally related to the kit. Applicant's representative claim language demonstrating the functional relationship of the bag to the instructions are as follows:

...(a) an enclosed bag having a sealable opening to allow an amount of said material to be placed in said enclosed bag such that there is headspace above said material; and

- (b) instructions for analyzing samples from said headspace in said enclosed bag, thereby providing said volatile organic compounds of said material.

The language in this representative claim functionally relates the kit, the instructions, and the VOC material to be so measured. Applicant maintains *In re Ngai* is not applicable.

Further, all elements of Applicant's invention have not been provided by Hemphill. A *prima facie* case of anticipation is not supported. Applicant requests withdrawal of the rejection.

#### **Rejections Under 35 U.S.C. § 103(a)**

Claims 11-16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 5,809,664 to Legros *et al.* in view of U.S. Patent 5,140,845 to Robbins, "Chemical Principals" to Masterton *et al.* and "Compilation of Air Pollutant Emission Factors, AP-42" to the Environmental Protection Agency (EPA). Applicant respectfully traverses the rejection and requests withdrawal of same.

Applicant's invention teaches a method as described above.

Legros *et al.* teach a drying system for a fluid bed dryer. Legros does not teach a method for measuring volatile organic compounds of material produced in a process system having emissions.

Robbins teaches a method for measuring the volatile constituent of a **sample of ground water or soil mixed with water**. The systems described in Robbins are open systems, or in other words, systems open to the atmosphere, not the closed systems of Applicant's invention. In addition, the method of Robbins requires agitation of the bag and contents to release the sample. Applicant's invention does not require agitation. Further, Robbins does not teach or suggest a method for measuring volatile organic compounds in spray bed dryers, fluid bed dryers, or storage tank systems having emissions as provided by way of Applicant's invention. Specifically, the leakage of underground storage tanks and the testing of the contaminated soil resulting therefrom as described in Robbins is an open system, and does not teach or suggest the measurement

of VOCs in the closed systems of Applicant's invention. Robbins therefore does not support the obviousness rejection of Applicant's invention.

"Chemical Principals" to Masterton, Slowinski, and Stanitski is a general chemistry text. This textbook does not teach or suggest the method for measuring volatile organic compounds of Applicant's invention as claimed.

"Compilation of Air Pollutant Emission Factors, AP-42" to the Environmental Protection Agency (EPA) is a general fact sheet for the EPA on techniques used in studying air pollution. This fact sheet does not teach or suggest the method for measuring volatile organic compounds of Applicant's invention as claimed.

There is no teaching or suggestion of a method for measuring volatile organic compounds (VOCs) of material produced in spray bed dryers, fluid bed dryers, or storage tank systems having emissions as provided by way of Applicant's invention in any of these references. Specifically, Legros and Robbins fails to teach or suggest Applicant's invention at least for the reasons discussed above. Further, Applicant fails to see how the addition of a general chemistry textbook and the generic EPA protocols into the body of this rejection provide any support to the veracity of the Examiner's position this matter.

Still further, there is no teaching or suggestion in any of these references to combine same, and no motivation to combine same. Applicant maintains the Examiner has engaged in impermissible hindsight reconstruction of Applicant's invention. Effectively, the Examiner has used Applicant's invention as a shopping list in order to attempt to locate these various references in this attempt to negate the patentability of Applicant's invention as claimed. A *prima facie* case of obviousness has not been established. Applicant respectfully requests withdrawal of the rejection.

Claims 17-19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over EPA Method AP-42 in view of Robbins and Masterton *et al.* as applied to claims 11-13, and further in view of U.S. Patent 5,522,271 to Turiff *et al.*, and /or Method 5035- Closed System Purge and Trap and Extraction for Volatile Organics in Soil and Waste Samples to the EPA. Applicant respectfully traverses the rejection and requests withdrawal of same.

Applicant's invention is as discussed above.

EPA Method AP-42 is as discussed above.

Robbins is as discussed above.

Masterton is as discussed above.

Turiff *et al.* teaches a soil sampling tool for measuring VOCs. Turiff *et al.* does not teach or suggest the method of Applicant's invention, wherein volatile organic compounds generated in spray bed dryers, fluid bed dryers, or storage tank systems having emissions are measured.

Method 5035 is a generic text dealing with testing VOCs in solid materials.

There is no teaching or suggestion of a method for measuring volatile organic compounds (VOCs) of material produced in spray bed dryers, fluid bed dryers, or storage tank systems having emissions as provided by way of Applicant's invention in any of these references. Specifically, Turiff and Robbins fails to teach or suggest Applicant's invention at least for the reasons discussed above. Further, Applicant fails to see how the addition of a general chemistry textbook and the generic EPA protocols into the body of this rejection provide any support to the veracity of the Examiner's position this matter.

Still further, there is no teaching or suggestion in any of these references to combine same, nor is there any motivation to combine the references. Applicant maintains the Examiner has engaged in impermissible hindsight reconstruction of Applicant's invention. Effectively, the Examiner has used Applicant's invention as a shopping list in order to attempt to locate these various references in this attempt to negate the patentability of Applicant's invention as claimed. A *prima facie* case of obviousness has not been established. Applicant respectfully requests withdrawal of the rejection.

Claims 20-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Method AP-42 in view of Robbins and Masterton *et al.* as applied to claims 11-13 above and further in view of "Determination of Volatile Organic Solvents in Water by Headspace Sampling with the 8200 CX Autosampler" to Penton. Applicant respectfully traverses the rejection and requests withdrawal of same.

Applicant's invention is as discussed above.

EPA Method AP-42 is as discussed above.

Robbins is as discussed above.

Masterton is as discussed above.

Penton teaches a closed system employed in headspace sampling.

There is no teaching or suggestion of a method for measuring volatile organic compounds (VOCs) of material produced in spray bed dryers, fluid bed dryers, or storage tank systems having emissions as provided by way of Applicant's invention in any of these references. Specifically, Penton and Robbins fails to teach or suggest Applicant's invention at least for the reasons discussed above. Further, Applicant fails to see how the addition of a general chemistry textbook and the generic EPA protocols into the body of this rejection provide any support to the veracity of the Examiner's position this matter.

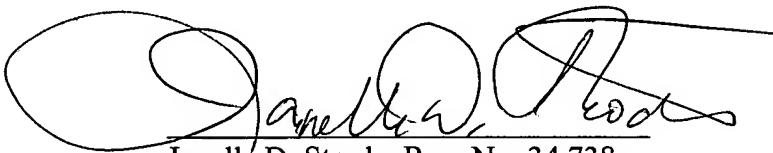
Still further, there is no teaching or suggestion in any of these references to combine same, and no motivation to combine the references. Applicant maintains the Examiner has engaged in impermissible hindsight reconstruction of Applicant's invention. Effectively, the Examiner has used Applicant's invention as a shopping list in order to attempt to locate these various references in this attempt to negate the patentability of Applicant's invention as claimed. A *prima facie* case of obviousness has not been established. Applicant respectfully requests withdrawal of the rejection.

**Conclusion**

Applicant respectfully requests withdrawal of all rejections of Claims 11-31. Should the Examiner believe that any issues remain outstanding, the Examiner is requested to call Applicant's undersigned attorney in an effort to resolve such issues and advance this application to issue.

Respectfully submitted,

LATHROP & GAGE L.C.

A handwritten signature in black ink, appearing to read "Janelle D. Strode", is written over a horizontal line.

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